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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 JIMMIE T. DEAN,

10 Plaintiff,

11 v.

12 KING COUNTY METROPOLITAN
(METRO) TRANSIT SYSTEM, et al.,

13 Defendants.

Civil Case No. C16-1821RSL

ORDER GRANTING KING
COUNTY'S MOTION TO DISMISS
AND GRANTING LEAVE TO
AMEND

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15 This matter comes before the Court on the King County defendants' "Motion to Dismiss
16 for Failure to State a Claim on Which Relief Can be Granted." Dkt. # 13. Plaintiff alleges that he
17 was wrongfully terminated from his job with King County Metro even though he was
18 performing adequately. He infers that he must have been discriminated against "for some
19 unknowable reason" and postulates that his employer and/or supervisor resented having to rehire
20 him after he took a medical leave of absence. Dkt. # 4 at 3-4. Plaintiff's complaint is titled
21 "Complaint for Wrongful Employment Termination Violation of Title VII and Employment
22 Discrimination." Dkt. # 4 at 1.

23 The King County defendants argue that plaintiff is asserting only a Title VII claim and
24 that the claim fails as a matter of law because (1) plaintiff has not affirmatively plead that he
25 exhausted his administrative remedies and (2) the allegations do not give rise to a plausible

26 ORDER GRANTING KING COUNTY'S
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1 inference of liability.¹ Defendants' first argument is not well taken. Failure to exhaust is an
2 affirmative defense that defendant must assert and prove. Miles v. Bellfontaine Habilitation Ctr.,
3 481 F.3d 1106, 1107 (9th Cir. 2007). Although plaintiff has the ultimate burden of establishing
4 that he exhausted his administrative remedies (or that defendants waived or are otherwise
5 estopped from insisting on exhaustion), the exhaustion issue cannot be resolved in the context of
6 this motion to dismiss.

7 Nevertheless, plaintiff's allegations are insufficient in that they do not give rise to a
8 reasonable inference of liability and/or do not adequately apprise King County of the nature of
9 his claims and the grounds on which they are asserted. The question for the Court on a motion to
10 dismiss is whether the facts alleged in the complaint sufficiently state a "plausible" ground for
11 relief. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007).

12 A claim is facially plausible when the plaintiff pleads factual content that allows
13 the court to draw the reasonable inference that the defendant is liable for the
14 misconduct alleged. Plausibility requires pleading facts, as opposed to conclusory
15 allegations or the formulaic recitation of elements of a cause of action, and must
16 rise above the mere conceivability or possibility of unlawful conduct that entitles
17 the pleader to relief. Factual allegations must be enough to raise a right to relief
18 above the speculative level. Where a complaint pleads facts that are merely
19 consistent with a defendant's liability, it stops short of the line between possibility
20 and plausibility of entitlement to relief. Nor is it enough that the complaint is
21 factually neutral; rather, it must be factually suggestive.

22 Somers v. Apple, Inc., 729 F.3d 953, 959-60 (9th Cir. 2013) (internal quotation marks and
23 citations omitted). As currently pled, plaintiff's Title VII claim is fatally flawed. Plaintiff has not
24 alleged that he is a member of a protected class and has therefore failed to allege facts from which one
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26 ¹ The County's motion was noted for consideration on June 2, 2017. On May 30, 2017, plaintiff
filed a one-page response indicating that he is proceeding pro se, that motions to dismiss are disfavored,
and that he is working on an amended answer. Dkt. # 17. During the past three weeks, plaintiff
contacted chambers at least twice to reiterate that he intended to file a more complete response. The
stated dates for filing have come and gone, however, and no further response has been submitted.

1 could reasonably infer that he was discriminated against because of his race, color, religion, sex, or
2 national origin. 42 U.S.C. § 2000e-2.

3 Whether a Title VII claim is the only cause of action asserted in this litigation is difficult to
4 discern, however. The title of the complaint uses the generic phrases “wrongful termination” and
5 “employment discrimination” in addition to the reference to Title VII. Plaintiff may be asserting a state
6 law claim for wrongful termination and/or a state or federal claim of disability discrimination/retaliation,
7 but it is not clear from the record. The Court finds that the King County defendants are entitled to a
8 more definite statement regarding the nature of the claim(s) against them and the facts on which the
9 claim(s) rest.

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11 For all of the foregoing reasons, plaintiff’s claims against the King County defendants are hereby
12 DISMISSED. Plaintiff is granted leave to amend his complaint to allege additional facts related to the
13 King County defendants. Federal Rule of Civil Procedure 8(a)(2) requires “a short and plain statement
14 of the claim showing that the pleader is entitled to relief.” Whether plaintiff can assert a plausible claim
15 for relief against his employer will depend on whether he can allege facts from which one could
16 reasonably infer that King County could be liable under state or federal law. Plaintiff is hereby
17 ORDERED to file on or before **July 28, 2017**, an amended complaint which clearly and concisely
18 identifies the acts of which King County and/or King County Metro is accused (including
19 specific allegations regarding his employer’s motivation in terminating his employment) and
20 how those acts violated plaintiff’s legal rights. The key to filing an acceptable amended
21 complaint will be providing enough facts in support of the legal claims asserted that King
22 County (and the Court) can discern the nature and plausibility of plaintiff’s claims. The amended
23 complaint will completely replace the original and should be a self-contained statement of
24 plaintiff’s claims.

1 Defendants need not respond to the complaint filed on November 29, 2016. The Clerk of
2 Court is directed to place this Order Requiring More Definite Statement on the Court's calendar
3 for consideration on Friday, July 28, 2017.

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5 Dated this 30th day of June, 2017.

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7 Robert S. Lasnik
8 United States District Judge
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